

OCT 10 1946

CHARLES ELMORE GREGORY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM 1946

No. **538** 1

HERMAN BERMAN,
Petitioner,
against

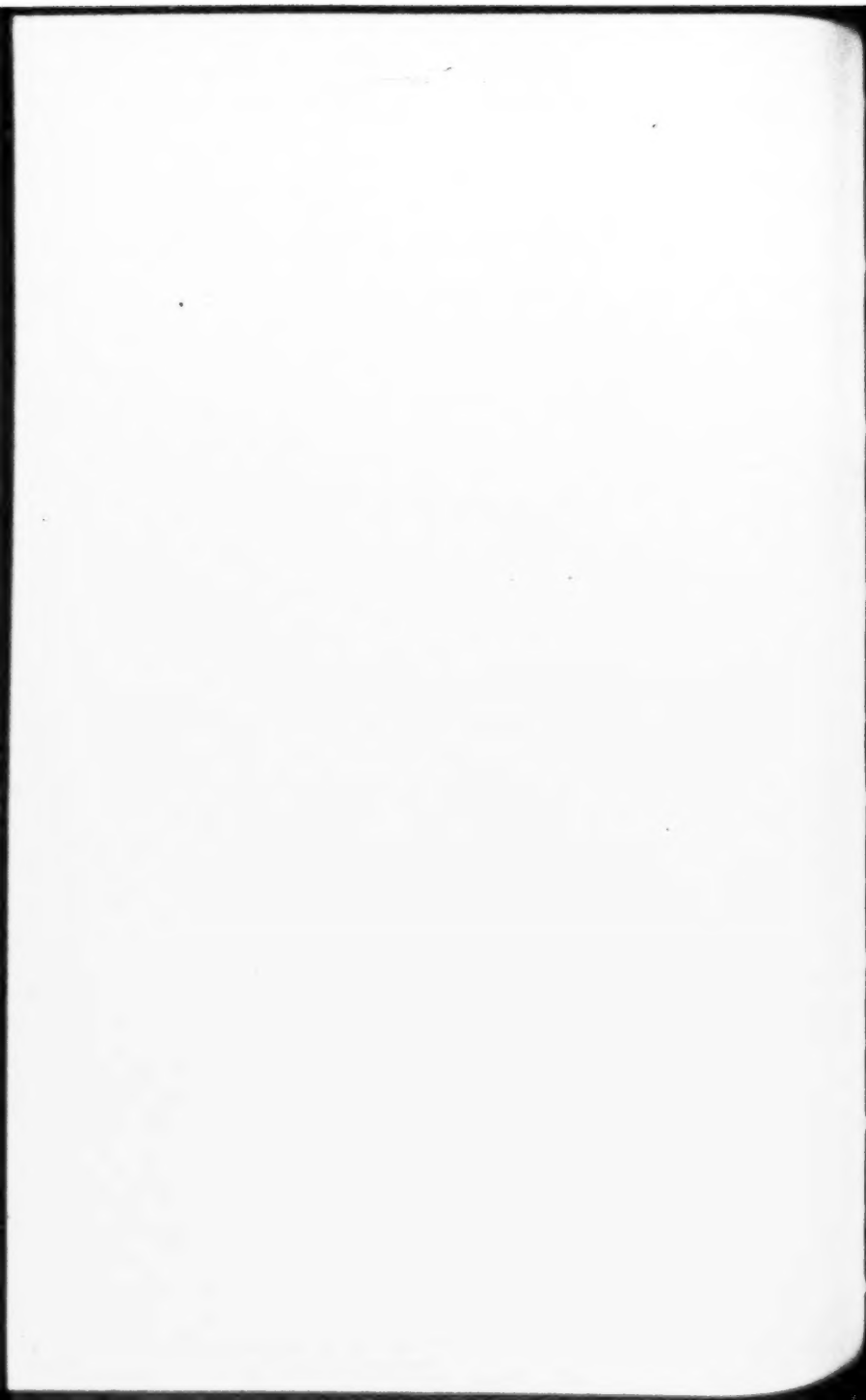
UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF OF THE AMERICAN CIVIL LIBERTIES
UNION, AMICUS CURIAE**

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae,
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U. S. v. Kauten, 103 Fed. 2d 703.....	2, 6, 7, 10, 11, 12, 13
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Statute and Regulations Cited

Selective Training and Service Act of 1940, Section 5(g) (50 U.S.C. App. §305g)	1, 6, 12
Selective Service Regulations:	
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Other Authorities Cited

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BRIEF OF AMICUS CURIAE

Statement

In the petition for writ of certiorari this court is asked for the first time to review and settle a question which has been much vexed in lower Federal courts and administrative agencies operating under the Selective Training and Service Act of 1940, namely, the construction of the phrase contained in Section 5(g) of that Act (50 U. S. C. App. §305g) which limits exemption from military service to those who are conscientious objectors "by reason of religious training and belief".

The construction adopted by the court below is squarely in conflict with the previous construction followed in the

Second Circuit in *U. S. v. Kauten*, 103 Fed. 2d 703; *U. S. ex rel. Phillips v. Downer*, 135 Fed. 2d 521; and *U. S. ex rel. Reel v. Badt*, 141 Fed. 2d 845. Furthermore, the ambiguity of the statute has puzzled draft boards and hearing officers of the Department of Justice who have been charged with classifying conscientious objectors and has resulted in conflicting rulings and policies. Review by this court is sought not only because of the need for authoritative construction of an ambiguous statute and the conflict in decisions of courts and administrative agencies, but also because many conscientious objectors, like the petitioner here, whose scruples are sincerely held, have been denied exemption and imprisoned solely because their conscientious beliefs in regard to war did not relate to any formal concept of deity.

Since the civil rights of petitioner and many others similarly situated are involved, the American Civil Liberties Union is impelled to file this brief urging review.

The Facts

The petitioner, Herman Berman, registered under the Selective Training and Service Act of 1940 and filed a questionnaire on June 6, 1942, with his local draft board in Los Angeles, California (S. R.)*. On the questionnaire he stated in answer to the question under "Series X" that he is conscientiously opposed both to combatant and non-combatant military service by reason of religious training and belief (S. R.). On the same day the petitioner filed a special form for conscientious objectors (Form 47) in which he gave a detailed statement of his

* (References S. R. are used to designate the supplemental record. Since this has not yet been printed page references cannot be given. References to the original record, with page references, are indicated by the letter R.)

views (S. R.). This statement was amplified at a hearing held on March 12, 1943, before Hon. Christian H. Hartke, Special Assistant Attorney General, designated to hear claims of conscientious objection and make recommendations to the Department of Justice under the procedure set up under Sec. 627.25(b) of the Selective Service Regulations.

Petitioner's objection to war was based upon sincere conscientious scruples. The draft boards, the Department of Justice and the courts below were unanimous on this point. Exemption as a conscientious objector was denied him however because it is claimed, as stated in the opinion of the Circuit Court of Appeals: "No matter how pure and admirable his standard may be, and no matter how devotedly he adheres to it, his philosophy and morals and social policy without the concept of deity cannot be said to be religion" (R. 46).

In determining whether petitioner's views are "religious" within the meaning of the statute, it is necessary to examine them in some detail as set forth in the Supplemental Record. At the time of filing his questionnaire the petitioner had just passed the twenty-first anniversary of his birth, which was in 1921. He was educated in a Brooklyn, New York, high school where he became interested in activities in behalf of peace, and also in support of the rights of labor. These activities and interests continued after graduation from high school and are reflected in his membership in the Youth Committee Against War, the Co-operative League, the Workers Defense League, the Socialist Party and other similar organizations. In fact the petitioner's chief occupation in recent years has been political and humanitarian work, particularly his work in behalf of peace. The petitioner